

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BOURNE CO.,

Plaintiff,

-against-

TWENTIETH CENTURY FOX FILM CORPORATION,  
FOX BROADCASTING COMPANY, TWENTIETH  
CENTURY FOX TELEVISION, INC., TWENTIETH  
CENTURY FOX HOME ENTERTAINMENT, INC.,  
FUZZY DOOR PRODUCTIONS, INC., THE  
CARTOON NETWORK, INC., SETH MACFARLANE,  
and WALTER MURPHY,

Defendants.

Case No. 07 Civ. 8580 (DAB)

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Deposition of JEREMIAH HORAN, pursuant  
to Rule 30(b)(6) Notice, held at the offices  
of Loeb & Loeb, 345 Park Avenue, New York, New  
York, on Friday, February 29, 2008, commencing  
at 9:57 a.m., before James W. Johnson,  
Registered Professional Reporter and a Notary  
Public of the State of New York.

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Q. Did you talk to anyone who personally had knowledge of a request having been made?

A. I have to answer that by saying that I spoke to anyone who might possibly have any knowledge of it and found that no one did have any recollection.

Q. Is it fair to say, then, that you don't know what the request was?

MR. FAKLER: Objection to form.

Q. If a request was made you don't know what the request was?

A. At the time we were looking I did not know. Since then I have seen the interoffice memo that was presented from, that was circulated at Fox. It says it was denied.

Q. Well, other than any knowledge you may have from that memo, of what that memo says, do you know specifically what the request was, what type of use was requested?

A. Since we had no record of the request, no, I would not know. Only from that Fox --

Q. And do you know the basis of the denial?

A. I'm sorry, I don't even know that there was a denial, since I have not seen any record.

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Horan

Q. So I may be beating a dead horse here, but if there was a request and if there was a denial it's fair to say that Bourne doesn't know the basis for the denial?

A. Well, I'm -- yeah, I guess that would be right.

Q. When did you first become involved in this matter?

A. In approximately March of 2007.

Q. And what was your involvement?

A. When we learned of the use, my first involvement was I viewed it on YouTube and was asked for my comments by the owner.

Q. And how did you first learn of its use?

A. One of the employees advised us that they had seen it on television, on YouTube, and that's when we began looking into it.

Q. And you said that was in March 2007?

A. That's correct.

Q. How do you know the date?

A. How do I know the date?

Q. Mm hmm.

MR. FAKLER: Objection to form, misstates his former testimony.

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Horan

A. That is my recollection of the time it happened. It was in March. I can't tell you exactly.

Q. Let me clarify the question.

Are there any documents that you know of that reflect the fact that Bourne made this use in March 2007?

A. Not that I'm aware of.

Q. Well, what was the name of the employee who brought this to your attention?

A. Jonathan Stone.

Q. Okay. What did you do following this being brought to your attention?

A. We first checked our computer files, and then our hard copy files, to find if we had in fact issued a license, since we knew that it had been originally run prior to 2007, to see if we had in fact, someone had in fact issued a license.

And then we did some checking to see, we went on the Internet to check to see, to verify the fact that it had been run and so on, and we had discussions in the office about what action we should take, and we consulted our attorney.

Q. Without telling me what your discussions

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with your attorney were, could you just tell me which attorney you consulted.

A. Thomas Levy.

Q. Did there come a time when Mr. Levy made a claim on behalf of Bourne against Fox?

A. Yes, he did. He sent a letter to Fox.

Q. Do you know when that was sent?

A. It was sent sometime in June of 2007.

MR. ZAVIN: I'm afraid I don't have other copies of this. Could we mark this as Exhibit 2.

(Horan Exhibit 2, Letter dated June 21, 2007 from Thomas Levy to Twentieth Century Fox Film Corporation, marked for identification.)

Q. Mr. Horan, I'm just showing you a letter from Mr. Levy dated June 21st, 2007 that's been marked as Exhibit 2.

Is this the letter that you're referring to that was sent on your behalf?

A. That's correct.

Q. To the best of your knowledge, was there any claim made against Fox prior to this letter being sent on June 21st, 2007?

A. No, there was no -- not to, not to my

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1 Horan  
2 knowledge.  
3 MR. ZAVIN: And just again for  
4 clarification of the record, that letter is  
5 Bates stamped Bourne 0001 through 0002.  
6 Q. Mr. Horan, can you explain to me why,  
7 having discovered this in March of 2007, Bourne  
8 made no claim or didn't bring this to the attention  
9 of Fox until June 21st, 2007.  
10 A. As I said, we were researching to make  
11 sure that we in fact had not issued any licenses or  
12 had not received any kind of requests for licenses,  
13 and discussed possible actions to take directly,  
14 and we decided at that point that we would consult  
15 Mr. Levy.  
16 Q. Prior to March 2007 had anyone  
17 communicated any complaint to Bourne with respect  
18 to this use of "When You Wish Upon A Star?"  
19 A. No.  
20 Q. Had any licensee or potential licensee  
21 of "When You Wish Upon A Star" communicated any  
22 complaint or brought this use to the attention of  
23 Bourne?  
24 A. No.  
25 Q. Had any licensee prior to March 2007

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1 Horan  
2 said they weren't going to license "When You Wish  
3 Upon A Star" because of the use in "Family Guy?"  
4 A. No.  
5 Q. Has Bourne ever granted a license to  
6 parody "When You Wish Upon A Star?"  
7 A. No.  
8 Q. Is that -- has anyone ever asked for a  
9 license to parody "When You Wish Upon A Star?"  
10 A. Not to my knowledge.  
11 Q. But it's fair to say you don't know  
12 whether the request that Fox made was to parody  
13 "When You Wish Upon A Star?"  
14 A. I'm sorry, but I don't, I don't know  
15 that, I never saw the original request from Fox, so  
16 I don't know what it says.  
17 Q. Right, and Bourne doesn't know what it  
18 says?  
19 A. Right, so we can't say that, I can't say  
20 that, if, that Fox was the first one. I cannot say  
21 that.  
22 Q. But you just don't know either way?  
23 A. Either way, correct.  
24 Q. Why was the decision made to make a  
25 claim against Fox with respect to this, the use by

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1 Horan  
2 Fox in "Family Guy?"  
3 A. The decision was made because as a music  
4 publisher we have a right and an obligation to  
5 protect our copyrights, and we felt that this use  
6 was an invalid use, was an unlicensed use, and  
7 therefore we had a right and an obligation to make  
8 a claim.  
9 Q. Was that the sole reason?  
10 A. Yes.  
11 (Horan Exhibit 3, Complaint and Jury  
12 Demand, marked for identification.)  
13 Q. From 1999 to the present, when you were  
14 doing your second stint at Bourne --  
15 A. Yes?  
16 Q. -- do you know how many copyright suits  
17 Bourne commenced to protect its copyrights?  
18 MR. FAKLER: Object on the ground it's  
19 outside the scope of the 30(b)(6) notice.  
20 MR. ZAVIN: Objection is noted.  
21 A. I know specifically of two that did not  
22 go to trial, that complaints were made for invalid  
23 use of Bourne copyright songs.  
24 Q. Do you know what songs were involved?  
25 A. Yes.

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1 Horan  
2 Q. Which songs were they?  
3 A. One was "Whistle While You Work," and  
4 one was "Hi Ho." The other was "Hi Ho."  
5 Q. Who were these claims made against?  
6 A. "Whistle While You Work" was made  
7 against the Ying Yang Twins and their record  
8 company, the name of which I cannot remember, and  
9 the other was, the other suit was against Alfred  
10 Publishing.  
11 Q. Were uses made of either of these songs  
12 claimed to be parodies?  
13 A. No.  
14 Q. Do you know what market substitution is?  
15 A. Yes.  
16 Q. In your view, what is market  
17 substitution?  
18 A. In the case of in the music industry,  
19 the use of one song for another song or a similar  
20 song, substituting one song for another, for  
21 whatever use is being made.  
22 Q. So that is it fair to say a potential  
23 licensee, you know, wants song A, but instead of  
24 using song A it uses song B?  
25 A. That's correct.

7 (Pages 22 to 25)

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Horan

Q. Does Bourne have evidence of "I Needed You" substituting in the market for "When You Wish Upon A Star?"

A. Well, we have the immediate evidence that we don't have a synchronization license or fee for the use on "Family Guy." Nor do we have performance income from that use, but then also, as stated in Ms. Siroka's report, we don't always, people don't tell us why they don't use a song, but these things do affect a potential user's decision to use the song.

Q. Let me clarify the question.

Does Bourne have any evidence that any potential licensor, putting Fox aside for the moment, that "Family Guy" any other potential user or licensor or purchaser of songs has chosen to purchase "I Needed You" instead of purchasing or licensing "When You Wish Upon A Star?"

A. No, we do not.

(Horan Exhibit 4, Responses to Defendant's First Request for Admissions, marked for identification.)

Q. I'm showing you a document that's been marked as Exhibit 4, which I will represent to you

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Horan

is the responses to requests for admissions that we received from Bourne, and the first question is, do you recognize it?

A. Yes.

Q. You've seen it before?

A. Yes, I have.

Q. Did you participate in its preparation?

A. Yes, I did.

Q. Okay, could you tell me the basis of the denial for request for admission number 10 on page 5, and just so the record is clear, the request for admission reads, "Admit that," quote, "I Needed You," end quote, "has not served as a substitute in the market for the song," the song being "When You Wish Upon A Star," and what is the basis for the denial of that request for admission?

A. Because we were not aware of any use does not necessarily mean to us that it has not been used.

Q. In your opinion, would any licensor who wants to use "When You Wish Upon A Star" think that "I Needed You" is an acceptable substitute?

MR. FAKLER: Objection to the request for an opinion, a lay opinion.

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A. In my opinion, no.

Q. So could you explain to me the basis for the denial of request for admission number 11, which states, "Admit that," quote, "I Needed You," end quote, "cannot serve as a substitute in the market for the song."

A. Again, I, I don't know that -- we don't, Bourne Company doesn't know that somebody, what somebody could do, so therefore we deny it. We can't say specifically that it cannot serve as a substitute in the marketplace for the song.

Q. But it's your opinion that it cannot? I think you just testified to that.

MR. FAKLER: Objection, asking for a lay opinion.

A. Again, my personal opinion is that it cannot.

Q. And then let's go to request for admission number 12, which says, "Admit that plaintiff," or Bourne, "is not aware of any instances where a consumer or other potential user or licensee of this song has purchased, used or licensed 'I Needed You' instead of the song."

What is the basis of the denial of that

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request for admission?

A. Again, we are not aware of any, but we don't know, so we can't admit that, we cannot say that there is an instance or not.

Q. Mr. Horan, I suggest that you read that request for admission carefully, because I believe that it asks, admit that you are not aware of any instances of substitution, and yet you denied that, which is denying -- it implies to me that you are aware of instances of market substitution.

Can you explain to me what the basis of the denial for that request for admission was.

A. No, I cannot in that case.

Q. Do you agree with me that Bourne does, is not aware of any instance where a consumer or other potential user or licensee of the song has purchased, used or licensed "I Needed You" instead of the song?

MR. FAKLER: Objection, misstates his prior testimony.

MR. ZAVIN: I, I was asking him whether he agreed with that statement.

Q. You can answer the question.

A. Would you repeat the question.

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- 1  
2 Q. That Bourne is not aware of any  
3 instances where a consumer or any other potential  
4 user or licensee for the song has purchased, used  
5 or licensed "I Needed You" instead of the song.  
6 A. Correct, we are not aware.  
7 Q. Now, other than Ms. Siroka's opinion --  
8 put that aside for the moment -- does Bourne have  
9 any evidence that the song "I Needed You" as it  
10 appears in "Family Guy" has harmed the market for  
11 "When You Wish Upon A Star?"  
12 A. As I said, the, the fact that it was  
13 used without a license in "Family Guy" is, is -- no  
14 synch license, no performance license, has harmed  
15 our market.  
16 Q. Putting aside any royalty you were  
17 deprived of by Fox, Fox's use, putting aside  
18 Ms. Siroka's report, do you have any evidence  
19 whatsoever that the song "I Needed You" as it  
20 appears in "Family Guy" has harmed the market for  
21 "When You Wish Upon A Star?"  
22 A. No.  
23 Q. When did you first contact -- and when I  
24 say "you" I mean Bourne -- first contact  
25 Ms. Siroka?

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Horan

- 1  
2 A. We contacted -- we didn't have direct  
3 contact with her. She was contacted by our  
4 attorneys.  
5 Q. Do you know when?  
6 A. I don't know the exact date. It was  
7 within the last month.  
8 Q. Okay, that is actually what I wanted to  
9 know, so I'm going to show you a document that's  
10 been marked as Exhibit 3 in this proceeding, which  
11 I will represent to you is the complaint that was  
12 served against the defendants.  
13 Do you recognize that document?  
14 A. Yes, I do.  
15 Q. Did you see it at the time it was  
16 drafted?  
17 A. Yes.  
18 Q. So is it fair to say that you saw it  
19 before it was served?  
20 A. Yes.  
21 Q. And the complaint is dated October 3rd,  
22 2007; is that correct?  
23 A. October 3rd?  
24 Q. If you'll look at the page 11 --  
25 A. Yes.

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Horan

- 1  
2 Q. -- does that conform with your personal  
3 knowledge that the complaint was prepared and/or  
4 served approximately on October 3rd?  
5 A. Yes.  
6 Q. And is that, and is -- am I correct that  
7 that is well before there was any contact made with  
8 Ms. Siroka or any report received from Ms. Siroka?  
9 A. Yes.  
10 Q. In that case, sir, could you tell me the  
11 basis in paragraph five for the statement that  
12 defendants -- and I'm quoting now -- quote,  
13 "Defendants' infringing activities have also caused  
14 substantial and irreparable harm to Bourne."  
15 A. Would you repeat the question, please.  
16 Q. Could you tell me the basis of the  
17 statement in the complaint in paragraph five where  
18 it is asserted that, quote, "Defendants' infringing  
19 activities have also caused substantial and  
20 irreparable harm to Bourne."  
21 A. We feel that this use without a license,  
22 and with the nature of the lyrics that were used,  
23 will be harmful to Bourne for two reasons; first,  
24 that it would appear that Bourne did not protect  
25 its copyrights, in that it was, a use such as this

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- 1  
2 was made without our consent; and secondly, that,  
3 with the nature of the use of a classic like "When  
4 You Wish Upon A Star," we felt that it could harm  
5 the potential market for the use in commercials and  
6 in other films.  
7 Q. But isn't it fair to say, I think as you  
8 previously testified, you didn't have any evidence  
9 that any such harm had occurred?  
10 MR. FAKLER: Objection, vague as to what  
11 you mean by "evidence." You mean admissible  
12 evidence?  
13 MR. ZAVIN: No. In the common layman's  
14 terms.  
15 Q. Did you have any evidence in October  
16 2007 that there has been any actual harm to the  
17 composition?  
18 A. The evidence we have is that we have,  
19 I've got 25 years' experience in the business, the  
20 owner of the company's been in business for a long  
21 time, and if a song is used, although we cannot  
22 give you dollars-and-cents figures, how a song is  
23 used in one instance can and has affected how the  
24 song is used in future instances, and we feel that  
25 this is a case, exactly this kind of a case now.

9 (Pages 30 to 33)



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Horan

Q. Are you aware that the song was used in, starting in, publicly in November 2003 on "Family Guy," that it was both broadcast and distributed on DVD since November of 2003?

A. We are now aware of that fact, yes.

Q. And were you aware of that fact in October 2007 when you filed this complaint?

A. Yes, we were.

Q. Do you have any evidence that between October -- I'm sorry -- between November 2003 and October 2007 that the existence of "I Needed You" as performed on "Family Guy" harmed the market for "When You Wish Upon A Star?"

A. Again, it -- other than "Family Guy," the synching and the fees that we should have gotten from, we feel we should have gotten from "Family Guy," we don't, but, as pointed out in Ms. Siroka's report and from my experience, that people do -- we would never know if people don't use our song for whatever reason.

They don't come to us and say, we're not going to use this song because of this or that. We don't know that, but it's --

Q. Have you made any effort --

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MR. FAKLER: Can he finish his answer.

Q. Go ahead. Please.

A. No, I've finished.

Q. Have you made any effort whatsoever to determine whether there's anyone out there that hasn't used "When You Wish Upon A Star" because of the song "I Needed You?"

A. No, we haven't, because we don't know, we wouldn't know how to go about doing so.

Q. Well, have you asked any advertising agencies?

A. No, we have not.

Q. Have you asked any networks?

A. No, we have not.

Q. Have you asked Disney?

A. No, we have not.

Q. Have you had any communications with Disney about the song "I Needed You?"

A. No, we have not.

Q. Based on -- is it fair to say that Disney is one of the major licensors of "When You Wish Upon A Star?"

A. Disney is a licensor. I don't know if we consider it major. We license regularly.

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Horan

MR. ZAVIN: Let's mark this as Defendants' Exhibit 5.

(Horan Exhibit 5, List of Licenses, marked for identification.)

Q. Showing you a document that's been marked as Defendants' Exhibit 5 which was produced to us by Bourne, it's Bates stamped 0145 through 0147. Do you recognize this document?

A. Yes, I do.

Q. What is it?

A. It's a listing of licenses that have been issued for "When You Wish Upon A Star" in 2003 through 2008.

Q. Okay. I haven't added them up, and, you know, we can certainly do it, but it appears to me that maybe a third of the licenses or 25 percent of all of these licenses are to Disney. I mean, it is what it is. I'm not trying to --

A. Oh, okay.

Q. -- trick you into giving, agreeing with a false number, but it is, certainly a substantial number of the licenses appear to be with Disney.

Do you agree with that?

MR. FAKLER: Objection to form, vague as

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to "substantial."

A. Yes, I'll agree with that.

Q. And do you have any reason to think that Disney's licensing of the song has diminished because of "I Needed You?"

A. I don't think so, but they're -- the reason that the main license we do with Disney is the recurring, What's Next, Super Bowl, World Series spots that they do, and that -- so it's a repeat of basically the same use in most of these cases.

Q. But their use of the song hasn't diminished, then?

A. No.

Q. Okay. Now, let me ask a question.

In preparing for this deposition did you look to see whether the number of licenses granted from 2003 to 2007 or '08, the present, was substantially less per year than the number of licenses granted prior to 2003?

MR. FAKLER: I'm sorry, Jonathan, did you ask about a particular type of licenses?

MR. ZAVIN: For "When You Wish Upon A Star."

10 (Pages 34 to 37)

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1 Horan  
 2 MR. FAKLER: For synchronization  
 3 licenses?  
 4 MR. ZAVIN: All types of licenses.  
 5 MR. FAKLER: I'm going to object to the  
 6 extent you're asking about other than  
 7 synchronization licenses, the audiovisual  
 8 rights, it's outside the scope of the  
 9 30(b)(6).  
 10 A. And we didn't -- would you repeat the  
 11 question.  
 12 (Record read.)  
 13 A. No, we did not.  
 14 Q. In the document request to Bourne we  
 15 requested -- I'll paraphrase it -- "All documents  
 16 evidencing harm in the market substitution or harm  
 17 to 'When You Wish Upon A Star.'" To the best of my  
 18 knowledge, we haven't received any such documents.  
 19 Do you know whether there are any  
 20 documents that Bourne has evidencing any harm of  
 21 any kind to "When You Wish Upon A Star" because of  
 22 "I Needed You?"  
 23 A. No. I do not know of any such  
 24 documents.  
 25 Q. Other than your opinion, your personal

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1 Horan  
 2 opinion, and Ms. Siroka's opinion, for whatever  
 3 it's worth, does Bourne have any evidence  
 4 whatsoever that it has been irreparably harmed  
 5 by -- or the market for "When You Wish Upon A Star"  
 6 has been irreparably harmed by "I Needed You?"  
 7 MR. FAKLER: Objection to form to the  
 8 extent it calls for a legal conclusion.  
 9 Q. You can answer.  
 10 A. No, we do not.  
 11 Q. Do you have any reason to believe that  
 12 the number of licenses and license requests from  
 13 2003 through to 2007 has diminished compared to the  
 14 period before 2003?  
 15 MR. FAKLER: Objection to the extent it  
 16 calls for testimony other than synchronization  
 17 licenses.  
 18 MR. ZAVIN: Okay.  
 19 Q. Let's restrict it to synchronization  
 20 licenses for the moment.  
 21 Do you have any reason to believe that  
 22 the number of synchronization licenses granted or  
 23 the requests for synchronization licenses has  
 24 diminished from 2003 to 2007?  
 25 A. No.

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1 Horan  
 2 Q. As a matter of fact, page -- in Bourne's  
 3 complaint in this action, in paragraph 21 Bourne  
 4 asserts, and I quote, "'When You Wish Upon A Star'"  
 5 has only grown in popularity since it was  
 6 introduced in 1940."  
 7 Do you see that in the complaint?  
 8 A. Yes, I do.  
 9 Q. Is that a true statement?  
 10 A. Yes, it is.  
 11 Q. And popularity has not been diminishing  
 12 since 2003, has it?  
 13 A. We have no evidence of that fact, no.  
 14 Q. Bourne has in this lawsuit given as a,  
 15 or has produced to defendants the expert report of  
 16 Sandy Wilbur. Are you aware of that?  
 17 A. Yes, I am.  
 18 Q. Do you know when Sandy Wilbur was  
 19 retained by Bourne or Bourne's attorneys on  
 20 Bourne's behalf?  
 21 A. I do not know that exact date or the  
 22 approximate date, no.  
 23 Q. Well, was it within the last month or  
 24 two?  
 25 A. As far as I know, yes.

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1 Horan  
 2 Q. Let me ask specifically, was it prior to  
 3 October 3rd, 2007?  
 4 MR. FAKLER: Objection. This again is  
 5 outside the scope of 30(b)(6). He's just said  
 6 they, the company was not involved in her  
 7 retention; he's speaking solely based on  
 8 personal recollection, if he knows at all.  
 9 Q. Okay, if you know.  
 10 A. As far as I know, no.  
 11 Q. I'm sorry, I don't -- I've lost track of  
 12 what the "no" means.  
 13 A. You had asked if it was prior to  
 14 October.  
 15 Q. Right.  
 16 A. And I said, no, as far as I know, it was  
 17 not.  
 18 Q. Did Bourne seek, prior to bringing this  
 19 litigation did Bourne seek the advice of any  
 20 musicologist with respect to how similar or  
 21 dissimilar "When You Wish Upon A Star" was from the  
 22 song "I Needed You?"  
 23 A. Yes, we did. We have an in-house editor  
 24 who works for one of our subsidiaries,  
 25 International Music Company, and he did an analysis

11 (Pages 38 to 41)

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1 Horan  
2 this on the grounds that it's outside the  
3 scope of the 30(b)(6) notice.  
4 MR. ZAVIN: Well, it isn't.  
5 MR. FAKLER: How is it within, how is  
6 the public association of Walt Disney on this  
7 notice? Can you show it to me.  
8 DI Q. Mr. Horan, did you ever watch in the  
9 1950s the television program "The Wonderful World  
10 Of Disney?"  
11 MR. FAKLER: I'm going to instruct the  
12 witness not to answer. This is way outside of  
13 anything on this list.  
14 Q. Mr. Horan, are you following the  
15 instruction of your counsel?  
16 A. Yes, I am.  
17 MR. ZAVIN: I have no further questions.  
18 MR. FAKLER: Can we take 10.  
19 MR. ZAVIN: Sure.  
20 MR. FAKLER: Thanks.  
21 (Recess taken.)  
22 MR. FAKLER: First I'd just on the  
23 record like to request that Mr. Horan have the  
24 opportunity to review and correct any final  
25 transcript of the deposition.

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1 Horan  
2 MR. ZAVIN: Agreed.  
3 MR. FAKLER: And so -- thanks, and I  
4 have just a little bit of cross here, so to  
5 speak.  
6 EXAMINATION BY MR. FAKLER:  
7 Q. Mr. Horan, having answered a series of  
8 questions, is there anything in your testimony that  
9 you feel the need, looking back on it, to amplify  
10 or clarify?  
11 A. Yeah, there were a couple of questions  
12 regarding market substitution and harm to the  
13 market. In a couple of instances I gave an answer  
14 of, if asked if there was any harm I said -- and I  
15 guess just an answer -- no, but in those instances  
16 I should, should have said that, brought up the  
17 loss of revenue from the "Family Guy" use that does  
18 affect Bourne Company.  
19 And then there was also a question about  
20 the, whether or not I was aware of whether or not  
21 the, a request from Fox had come in for the use,  
22 and I said I was not aware whether or not it came  
23 in or what was, whether it was denied or how it was  
24 denied.  
25 That should be clarified to state that

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1 Horan  
2 in 1998, until 2005 in fact, the only person who  
3 would have denied or handled a telephone call  
4 requesting a use would have been Beebe Bourne, who  
5 has since passed away, B-E-E-B-E Bourne, who died  
6 in 2005.  
7 MR. FAKLER: That's all I have.  
8 MR. ZAVIN: Okay, just very simple.  
9 EXAMINATION BY MR. ZAVIN:  
10 Q. I just -- I understand that Beebe Bourne  
11 died, but your answer remains correct that Bourne  
12 as a company does not have any record of the  
13 request, a request coming in or what the nature of  
14 the request was or why it was denied if it was  
15 denied; is that correct?  
16 A. That is correct.  
17 Q. Okay. And just with respect to your  
18 first clarification, is it, does the rest of your  
19 answer remain the same, that you, other than the  
20 loss of whatever revenue that they might have  
21 expected to receive by Fox from the use, Bourne has  
22 no evidence of market harm or market substitution?  
23 A. That is correct.  
24 MR. ZAVIN: Okay, I have no further  
25 questions, except I reserve the right to

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1 Horan  
2 reopen this should the court move favorably,  
3 that the witness was improperly instructed not  
4 to answer certain questions or certain lines  
5 of questions.  
6 (Time noted: 11:45 a.m.)  
7  
8  
9  
10  
11 Sworn and subscribed to  
12 before me this \_\_\_\_ day  
13 of \_\_\_\_\_ 2008.  
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NOTARY PUBLIC

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## CERTIFICATE

STATE OF NEW YORK )  
 ) Ss  
 COUNTY OF NEW YORK )

I, JAMES W. JOHNSON, a Registered  
 Professional Reporter and Notary Public within  
 and for the State of New York, do hereby  
 certify:

That JEREMIAH HORAN, the witness whose  
 deposition is hereinbefore set forth, was duly  
 sworn by me and that such deposition is a true  
 record of the testimony given by such witness.

I further certify that I am not related  
 to any of the parties to this action by blood  
 or marriage and that I am in no way interested  
 in the outcome of this matter.

IN WITNESS WHEREOF I have hereunto set  
 my hand this 2nd day of March 2008.

JAMES W. JOHNSON  
 Registration #01J05000925  
 Commission Expires 9/4/2010

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## ERRATA SHEET

NAME OF CASE: Bourne Co. v. 20th Century Fox, etc.  
 DATE OF DEPOSITION: Friday, February 29, 2008  
 WITNESS: Jeremiah Horan

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JEREMIAH HORAN

Witness and sworn to before me  
 this \_\_\_\_ day of \_\_\_\_\_, 2008.

(Notary Public) My Commission Expires:

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